

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

v.

LUIS ANTONIO DUTTON-MYRIE,

Defendant.

NO. 3:07-cr-445 AND
3:11-cr-145

(JUDGE CAPUTO)

MEMORANDUM ORDER

On February 10, 2012, Defendant Luis Antonio Dutton-Myrie filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody. (Doc. 145.) It appears, however, that the above-captioned action is currently on direct appeal to the United States Court of Appeals for the Third Circuit. (Doc. 137.) As district courts should only consider a § 2255 motion in “extraordinary circumstances” while a direct appeal is pending, *see Kline v. United States*, No. 04CR269, 2006 WL 680842 (M.D. Pa. Mar. 14, 2006); *see also Kapral v. United States*, 166 F.3d 565, 570 (3d Cir.1999) (“collateral attack [under § 2255] is generally inappropriate if the possibility of further direct review remains open: A district court should not entertain a habeas corpus petition while there is an appeal pending in [the court of appeals] or in the Supreme Court”), and Defendant has presented no such “extraordinary circumstances,” Defendant’s motion to vacate (Doc. 83) will be dismissed as premature.

An appropriate order follows.

March 14, 2012

Date

/s/ A. Richard Caputo

A. Richard Caputo

United States District Judge